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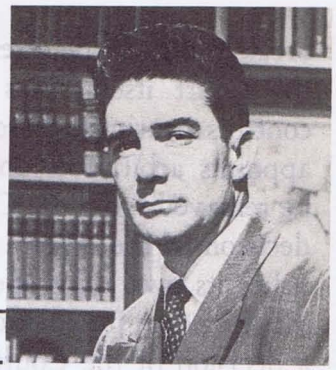

DAN SMOOT

SAVE THE CONNALLY RESERVATION

On November 17, 1964, Dean Rusk, Secretary of State, gave public notice that the Johnson administration will urge the United States Senate to repeal the Connally Reservation. The Johnson administration seems to think it has a "mandate from the people" to do something which the people have emphatically demonstrated they do not want done.[1]

Repealing the Connally Reservation could be equivalent to annulling the Constitution of the United States.

What The Reservation Is And Why It Was Adopted

Chapter XIV of the United Nations Charter established the International Court of Justice (World Court) to function in accordance with a "Statute," annexed to the Charter and considered part of it. The "Statute" provides that all UN members automatically become members of the World Court, though none is required to accept its jurisdiction. Nations which do not accept jurisdiction have the same rights and powers with regard to the Court as nations which do accept its jurisdiction.[2]

The World Court consists of 15 judges, elected for nine-year terms, by majority vote in the UN Security Council and by majority vote in the UN General Assembly. The candidates are nominated by the UN Secretary General.[2]

No nation (save only the Soviet Union) can have more than one judge on the World Court. The Soviets can have three judges on the court at one time, because of an agreement which President Franklin D. Roosevelt made with Joseph Stalin at Yalta in 1945—recognizing the Soviet provinces of Byelorussia and the Ukraine as independent nations, entitled to full representation in all UN agencies.[3]

Nine judges constitute a quorum for the World Court to do business. A majority of the nine can render judgments. This means that five judges, on a Court of 15, can make decisions. If the Court fails to reach a decision, because of deadlock, the President of the Court can cast an extra vote to

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break the tie. The President (who is elected by the Court itself) has other broad powers: he controls hearings, directs administrative business, appoints arbitrators and umpires. No judge can be removed from the Court, except by unanimous decision of the other 14 judges. The Court establishes its own rules and, in disputed cases, establishes its own jurisdiction. There is no appeal from a decision of the Court.[2]

Thus, the World Court is a most extraordinary judicial body. It is empowered to determine not only its own rules and procedures but also its own jurisdiction. In the United States, Congress has authority to determine the appellate jurisdiction of all federal courts (including the Supreme Court).

The World Court is empowered to make decisions from which there is *no relief.* Although decisions of the U. S. Supreme Court cannot be appealed, their effects can be nullified by Congress.

The World Court is unique in that a minority of one-third of its members can make a decision; unique in that no outside authority can remove one of its judges, regardless of what he does; unique in that one of its judges has a double vote in cases so controversial that they divide the Court evenly.

The most astonishing thing about the World Court, however, is that it can be staffed and controlled by nations which spurn its jurisdiction.

The United Nations Charter was signed at San Francisco on June 26, 1945. On July 28, 1945, the U. S. Senate ratified the UN Charter, thus authorizing United States membership in the UN. By joining the UN, the United States automatically became a member of the World Court. We were not, however, bound to accept its jurisdiction, unless our government filed a formal declaration of acceptance. The Truman administration demanded that this be done.

In November, 1945, U. S. Senator Wayne Morse introduced a Resolution to authorize United States acceptance of compulsory jurisdiction of the World Court, but specifying that the Court could *not* have jurisdiction over "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States." On December 17, 1945, Christian A. Herter (then a U. S. Representative, later Eisenhower's Secretary of State) introduced a similar Resolution in the House.

When the Morse Resolution came before the Senate for a vote (August 1, 1946), conservative Senators raised a vital question: *Who will determine* whether a matter is essentially within our domestic jurisdiction? The Morse-Herter group said the World Court itself should make the determination. Conservatives said this would give the World Court unlimited jurisdiction over our national affairs: the Court could hold that American immigration and tariff policies, for example, affect all nations and are, therefore, international matters, subject to control by international authority.

U. S. Senator Tom Connally (Texas Democrat, then Chairman of the Senate Foreign Relations Committee) proposed an amendment, or reservation, to the Morse World Court Resolution. The Connally Reservation consists of six words: *as determined by the United States.* On August 2, 1946, the Senate, by a vote of 62 to 2, approved the Morse World Court Resolution, as amended by the Connally Reservation. Thus, our formal acceptance of World Court jurisdiction provides that the United States will *not* accept compulsory jurisdiction of the Court in "matters which are essentially within the domestic jurisdiction of the United States *as determined by the United States.*"[4]

Efforts To Repeal

Internationalists immediately began a campaign to kill the Connally Reservation. In February, 1947, the American Bar Association, by a close vote, recommended repeal.

But massive and concerted efforts for repeal of the Connally Reservation did not begin until 11 years later. The first great wave of propaganda

broke around May 1, 1958 (the first "Law Day, U.S.A."), with a sudden spate of rhetoric about "World Peace Through World Law." The propaganda continued with ever-rising volume for almost two years—all of it thundering the theme that the next step toward peace on earth must be repeal of the Connally Reservation.[5]

In his State of the Union Message on January 9, 1959, President Eisenhower recommended "re-examination of our own relation to the International Court of Justice."[6] On March 24, 1959, Senator Hubert H. Humphrey (Minnesota Democrat), joined by Senator Jacob K. Javits (New York Republican), introduced a resolution to repeal the Connally Reservation. Congress adjourned in 1959 without acting on the Humphrey resolution.[5]

In his State of the Union Message January 7, 1960, President Eisenhower again requested repeal of the Connally Reservation. The Senate Foreign Relations Committee (under Chairmanship of J. William Fulbright) scheduled hearings in January, 1960, apparently intending to hear only witnesses who favored repeal. It seemed cut and dried: the committee would favorably report, and the Senate perfunctorily pass, the Humphrey Resolution; and the Connally Reservation would be repealed before the public even knew what the reservation was.[7]

When word got out, however, the public was quick to realize that repeal of the Connally Reservation meant unconditional surrender to the World Court. Washington politicians were deluged with wires, letters, petitions, and resolutions demanding that the Connally Reservation be retained. On March 30, 1960, Fulbright's Foreign Relations Committee tabled the Humphrey proposal to repeal the Connally Reservation, not letting it go to the Senate for a vote.[7]

In 1960, both presidential candidates favored repeal of the Connally Reservation, but neither made an issue of it in the campaign.

In 1961, another resolution to repeal the Connally Reservation was introduced in the Senate, but did not progress to the point of hearings. No official effort to repeal was made in the important election year of 1962.

On June 20, 1963, U. S. Senator Russell B. Long (Louisiana Democrat) introduced a Resolution asking the President to sponsor in the United Nations a plan to reconstitute the World Court, in such a way that the Court could force its jurisdiction on UN member nations.[4] The Long Resolution died with the 88th Congress.

Neither Senator Goldwater nor President Johnson discussed repeal of the Connally Reservation during the 1964 political campaign, though it is now apparent that the President intended to urge repeal, if he got his "mandate" at the polls.

Propaganda For Repeal

In October, 1959, the American Bar Association released a special committee report called *Self-Judging Aspect of the United States' Domestic Jurisdiction Reservation with Respect to the International Court of Justice.* The report became a major source of ammunition for those aiming at repeal of the Connally Reservation.

"Self-judging" is a phrase widely used to shame Americans. *Life* magazine, for example (editorially, July 11, 1960), spoke of the Connally Reservation as "self-judging" and condemned it as "bad law," because "no man should be a judge in his own cause." *Life* used a theme of all arguments against the Connally Reservation:

America boasts that she believes in government by law and not by men; the American system is based on respect for law—on the premise that law must be supreme, prevailing over the pride and greed and objectives of individuals; but the Connally Reservation shows that we are not willing to live by the "rule of law" in international affairs; we are not willing to submit disputes fearlessly to a world court for judicial arbitration; we insist on being the judge of disputes involving us — of "self-judging" our own causes.

The truth is that a man is not being "a judge in his own cause" when he questions the jurisdiction of a court to hear his cause. A cause is never

"judged" until after the question of jurisdiction has been decided—and until after all the facts and arguments are in.

Under American principles of law, every person charged with law violation, or charged in any kind of civil action, has a right to contest jurisdiction of a court to hear the case.

No American court—not even the Supreme Court—has the power to determine its own jurisdiction over American affairs, as the World Court will have, if we repeal the Connally Reservation.

Drawing a parallel between "rule of law" in the United States and "rule of law" in international affairs is a false logic. *The American system is based on respect for law*; but there can be no law without enforcement power.

At present, nothing but world war can force a nation to obey the World Court. That would be senseless, because the Court is supposed to prevent war, not cause it. For enforcing World Court decisions, the only alternative to world war is a universal police state.

A World Court, backed by enough power to enforce its decisions, would, of necessity, be a worldwide dictatorship. If none resisted, we would have "world peace through world law." If people in any nation did resist, they would be outlaws.

In June, 1960, *The Reader's Digest* published an article, by William Hard, entitled, "The United States is Impeding World Law!" The article is a typical plea for repeal of the Connally Reservation.

Mr. Hard argues that the United States adopted the Connally Reservation as a legal subterfuge to escape jurisdiction of the World Court; that the "Connally reservation was adopted, in varying words, by eight other countries"; and that, therefore, the United States is stained with dishonor because it is responsible for denying the World Court jurisdiction to settle international disputes.

The *facts* are in the Summer, 1963, "World Court Issue," of *Law Today,* official journal of the Independent Bar Association, 550 Fifth Avenue, New York City; and in the 1958-1959 World Court *Yearbook,* which published the Declarations of Acceptance of Jurisdiction filed with the Court.

Only 35 of the 115 UN members of the World Court accept jurisdiction of the Court. No communist nation accepts World Court jurisdiction. Of the 35 nations which do "accept," 27 have reserved the right to reject the Court's jurisdiction as and when they please.[4,8]

This means that only eight nations have accepted World Court jurisdiction as compulsory in international disputes. Those eight nations are Free China, Denmark, Finland, Liberia, Mexico, Norway, Sweden, United States. Of these, three reserve the right to deny the Court jurisdiction in cases that are strictly domestic affairs, and reserve the right to determine what is a domestic affair: Liberia, Mexico, and the United States. [4,8]

Liberia, Mexico, and the United States promise to accept World Court jurisdiction until six months *after* they give notice of cancelation. Denmark, Finland, Norway, and Sweden may cancel their adherences to World Court jurisdiction by giving notice six months *before* a specified date. Thus, these four Scandinavian nations can escape from compulsory jurisdiction of the World Court more easily than the United States, Liberia, and Mexico can.[4,8]

Free China is the *only* nation which adheres to World Court jurisdiction more completely (with less reservation) than the United States.[4]

Like all other propagandists for repeal of the Connally Reservation, William Hard, in *The Reader's Digest,* argues that we can trust the World Court because it has a good record and is composed of good men. On the other hand, these same propagandists complain that the World Court has practically no record because nations will not submit important cases for its adjudication and that, as a result, the Court heard only ten cases during its first twelve years (1946-1958)!

The present 15 World Court justices said to be worthy of America's absolute trust come from:

Australia	Peru
France	Poland
Free China	Senegal
Greece	Soviet Union
Italy	United Arab Republic
Japan	United Kingdom
Mexico	United States[9]
Pakistan	

The one American on the World Court is Dr. Philip C. Jessup, who took office February 6, 1961. In the past, Dr. Jessup had official connections with at least six notorious communist fronts, and was closely associated with such communist agents as Alger Hiss, Harry Dexter White, Frederick Vanderbilt Field, and Lauchlin Currie.[10] Jessup's record is, in fact, so bad that the Senate, in 1951, refused to confirm his nomination (by President Truman) as Ambassador to the UN.[11]

Seven nations with judges on the World Court do not themselves accept the Court's jurisdiction: Greece, Italy, Peru, Poland, Senegal, Soviet Union, United Arab Republic.[4,8]

Having alleged that Americans can trust the World Court not to meddle in our domestic affairs if we repeal the Connally Reservation, William Hard, in *The Reader's Digest,* argues that we do not need to trust the Court, because it could not meddle in our internal affairs if it wanted to. Mr. Hard says:

"Should the United States increase its loans and grants to India? How many refugees from oppression should the United States welcome to its shores? How many yards of British woolen goods should the United States admit to its domestic market?

"There is not a shred of international law on any of these and similar questions *unless and until the United States voluntarily makes them international questions by signing treaties about them.*"

The truth is that the United States is a party to hundreds of treaties and executive agreements dealing with these very subjects—international agreements which the World Court itself lists as the official basis of its jurisdiction. From page 198 of the 1958-1959 World Court *Yearbook*:

"The Court's jurisdiction is based, on the one hand on various treaties and other instruments concluded after the Second World War, and, on the other, on some agreements and instruments concluded before 1945 and still in force today."[8]

From pages 199 through 333 of the 1958-1959 *Yearbook,* the World Court lists documents on which its jurisdiction rests. Forty of the documents listed are American foreign aid agreements with other nations!

If the Connally Reservation were repealed and the United States should subsequently stop foreign aid largess, all UN members affected (which would be most of them) could claim that our action damaged them. What if they brought charges in the World Court, to compel us to continue foreign aid? We might argue that taxation imposed on Americans by their own government is strictly an internal affair not subject to jurisdiction of the World Court. The other nations could argue that American taxation to support foreign aid is a legitimate international affair, because our foreign aid programs vitally affect the economy of the world. Here then would be a dispute about jurisdiction. The World Court Charter (Article 36, Paragraph 6) says:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."[8]

William Hard, in *The Reader's Digest,* denies that repeal of the Connally Reservation would enable the World Court to assume jurisdiction over American immigration laws. For the truth, we should examine some of the documents which the World Court lists as "providing for the Jurisdiction of the Court": the July 28, 1951, "Convention relating to the status of refugees"; the October 19, 1953, "Constitution of the Intergovernmental Committee for European Migration"; the Constitution of the International Refugee Organization (IRO). The IRO is no longer in existence; but its old constitution and protocols are still considered, by the World Court itself, as a basis for World Court jurisdiction.[8]

Mr. Hard assures us that repeal of the Connally Reservation would not enable the World Court to assume jurisdiction in matters affecting American tariff laws, because, he indicates, the United

States has signed no treaties about tariff matters. The United States government has probably made more agreements with foreign nations on the general subject of tariffs than on any other subject. Between 1934 and 1962, our government made international agreements under the Reciprocal Trade Agreements Act; since 1962, we have been making international agreements under the Trade Expansion Act; and, since 1948, we have entered a welter of international agreements under the General Agreements on Tariff and Trade (GATT).

In addition to all these agreements which would enable the World Court to claim jurisdiction over America's tariff laws, there is the old 1948 Havana Charter of the International Trade Organization (ITO). The ITO never came into existence, because the Senate would not authorize American membership. Nonetheless, the World Court lists the ITO Charter as a document which provides World Court jurisdiction in matters of international trade.

Other documents which the World Court lists as "Constitutional Texts" providing its jurisdiction: the Charter of the United Nations; the Constitution of UNESCO; the Constitution of the International Labor Organization; the Constitution of the World Health Organization; the Genocide Convention.[8]

If the Connally Reservation were repealed, the World Court, citing such "Constitutional Texts," could claim jurisdiction over all actions of all governments in the United States, and over activities of American individuals. The Court could also cite a formal pronouncement by our own State Department (Publication No. 3972, issued in 1950) saying that there is no longer any real distinction between domestic and foreign affairs.[4,5]

In Articles 55 and 56 of the UN Charter, all UN members "pledge themselves to take joint and separate action in cooperation with the [UN] Organization to promote throughout the world:

"a. higher standards of living, full employment, and conditions of economic and social progress and development;

"b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation."

Are there nations in the world which are not enjoying "higher standards of living" and "full employment"? Do they feel we have fully lived up to our pledge "to take joint and separate action" to give them the fat and easy life? Could these nations bring charges against us in the World Court for failure to keep our solemn pledge?

In joining the World Health Organization we assumed treaty obligations to promote "health" throughout the world. The WHO Constitution defines health as,

"A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[12]

Promoting health, according to the World Health Organization, involves not only conventional activity in the fields of medicine and hygiene, but also housing, nutrition, economic conditions, employment, and mental conditions.

As long as there are people on earth not enjoying "complete physical, mental, and social well-being," some will feel that the United States has not done its best to create utopia. If we repealed the Connally Reservation, nations less prosperous than we could formally charge us with failure to fulfill our treaty pledge to the World Health Organization. The charge would be an international matter, subject to World Court jurisdiction, because the World Court says so, citing the World Health Organization Constitution as authority.

Through the Constitution of the International Labor Organization, our government has actually pledged America (by treaty agreement) to help create a worldwide socialist system.

Without the protection of the Connally Reservation, Americans, because of the UN Genocide Convention, would be exposed to arrest, transpor-

tation overseas, and trial before the World Court if accused of *causing harm,* in any way, to *any member* of a "national, ethnical, racial or religious group"—or if accused of "direct or public incitement" of others to cause harm to such persons.[13]

Arthur Larson, former ghost writer for President Eisenhower, is perhaps the foremost protagonist for repeal of the Connally Reservation. Since 1958, Larson has been Director of the Rule of Law Center at Duke University. In 1964, he became director of the National Council for Civic Responsibility, which columnist Edith Kermit Roosevelt correctly characterizes as an "embryonic Gestapo" operation to silence all constitutional conservatives. Miss Roosevelt comments on a book which Arthur Larson helped write (*Propaganda—Toward Disarmament in the War of Words*):

"On page 172 of this book . . . he [Larson] states that private publicists should be subjected to charges of 'war mongering propaganda' under international law. . . ."[14]

This is an old theme with Larson. Ever since he became director of the "world peace through world law" propaganda center at Duke University in 1958, he has insisted that the World Court should have jurisdiction over matters involving "international libel and slander." Larson often mentions that Nasser's Radio Cairo in Egypt carries broadcasts defaming leaders of other nations. He implies that repeal of the Connally Reservation would somehow enable the World Court to silence such broadcasts on Radio Cairo. He ignores the fact that the United Arab Republic does not accept jurisdiction of the World Court. He conceals the grim truth that if the World Court *could* silence, in Egypt, broadcasting which Mr. Larson dislikes, it could also stop, in the United States, broadcasting, speaking, and writing which Mr. Larson dislikes.

America's internationalists do not say they want a one-world dictatorship to enforce "world peace through world law." They claim to want only a world in which all nations will try to settle international disputes peacefully without resort to war or force. That objective is noble, but not new: men have wanted this kind of world since the beginning of civilization.

America, as a nation, exerted her maximum influence in leading the world toward peace and freedom during the 148 years when we followed George Washington's policy of national independence—keeping out of the affairs of other nations and compelling them to keep out of ours; being very fair, scrupulous, and open in keeping all the terms of all our treaty agreements with other nations and holding them accountable for keeping the same agreements.

That is the only kind of "world peace through world law" that has any real meaning. Such behavior won for America the respect of the world, and encouraged other nations to follow her example.

Since we renounced that benign policy of national independence, in 1945, our prestige and "leadership" in the world have crumbled—while the power of communist nations has increased.

Surely the public can and will, in 1965 as it did in 1960, storm the Senate with an irresistible volume of demands that it reject all efforts to repeal the Connally Reservation.

* * * * *

Christmas Orders

Thanks to all who have already done their Christmas shopping with us. If you need more Christmas order forms, please let us know. We urge you who have not already ordered to do so as soon as possible.

FOOTNOTES

(1) "Connally Amendment Tiff Rekindled," by Mike Quinn, *The Dallas Morning News,* November 22, 1964, Section 1, p. 16

(2) *The International Court of Justice,* Staff Study No. 8, Subcommittee on the United Nations Charter of the Senate Foreign Relations Committee, May, 1955, 29 pp.

(3) "Protocol of Proceedings," *The Conferences at Malta and Yalta* 1945, uncorrected Galley Proof, Department of State publication, undated, pp. 819-20

(4) "World Court Issue," *Law Today,* Summer, 1963, Official Journal of the Independent Bar Association, 550 Fifth Ave., New York City 10036, 46 pp.

(5) Statement of Views, testimony of Frank E. Holman, past President of the American Bar Association, before the Senate Foreign Relations Committee, January 27, 1960, 55 pp.; *Report on the Connally Amendment, The Special Committee On World Peace Through Law,* Maryland State Bar Association, December 22, 1960, 47 pp.

(6) "Presidential Messages," *Congressional Quarterly Almanac for* 1959, p. 643

(7) "Connally Amendment," *Congressional Quarterly Almanac for* 1960, pp. 230-1

(8) *International Court of Justices: Yearbook* 1958-1959, prepared by the Registry of the International Court of Justice, The Hague, The Netherlands, July, 1959, 333 pp.

(9) *The World Almanac* 1964, published by the New York World-Telegram Corporation, 1964, p. 774

(10) *Nomination of Philip C. Jessup,* Hearings before the Senate Foreign Relations Committee, 1951, 1022 pp.

(11) *Congressional Record,* October 18, 1951, p. 13419 (bound)

(12) *The United States and the World Health Organization,* Report of U. S. Senator Hubert H. Humphrey (Dem., Minn.) to the Senate Committee on Government Operations, May 11, 1959, p. 37

(13) *The Crime of Genocide, A United Nations Convention,* United Nations Publication Sales Number 59.1.3, originally published July, 1949, Fifth Revised Edition January, 1959, 15 pp.

(14) "Between The Lines—Government Fronts," by Edith Kermit Roosevelt, *The Shreveport Journal,* October 10, 1964